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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 OCT 15 AM 8:20

JEANNE HICKS, CLERK

BY: S. KELBAUGH

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S
MOTION FOR SANCTIONS PURSAUNT
TO RULE 15.7 FOR UNDISCLOSED
CHRIS KOTTKE INTERVIEW

FILED UNDER SEAL

The State of Arizona responds to Defense Reply and Motion for Sanctions Pursuant to Rule 15.7 for Undisclosed Chris Kottke Interview filed October 14, 2010.

Rule 15.1 of the Arizona Rules of Criminal Procedure requires disclosure of relevant written or recorded statements from witnesses whom the prosecutor intends to call in his case in chief. The State has no intention of calling Chris Kottke as a witness in this case.

Concerning the Hartford Insurance proceeds, the Court has already ruled that "[a]ny evidence or argument offered to suggest that the transfer of funds occurred in an unlawful manner, whether in a criminal or civil sense, is not admissible." ME 8/13/2010. Chris Kottke's testimony would be irrelevant in light of the Court's ruling.

1 Chris Kottke was the attorney for Katherine DeMocker in the handling of her
2 mother's estate. On August 13, 2010 attorney Tom Kelly, on behalf of his client attorney
3 Chris Kottke, requested a meeting "to discuss the legal basis supporting his work in the
4 probate case." The purpose of the meeting requested by Mr. Kottke, through counsel, was
5 "to lay this issue regarding his professionalism at rest." See August 13, 2010 letter attached
6 as Exhibit A.
7

8 On August 17, 2010 attorney Kottke and his attorney, Tom Kelly, met with Sheila
9 Polk and Jeff Paupore to discuss his professional and ethical conduct. During the meeting
10 requested by Mr. Kelly, Mr. Kottke explained his opinions concerning the factual and legal
11 bases of his actions concerning the administration of Carol Kennedy's estate. The meeting
12 lasted approximately four hours and was recorded by Mike Sechez.
13

14 The State had previously informed the defense that it does not intend to call Chris
15 Kottke as a witness in its case in chief. In light of the Court's above-mentioned ruling, Chris
16 Kottke's testimony is not relevant, nor is it exculpatory. The State has no objection, and in
17 fact has no standing to object, to the defense speaking with Mr. Kottke and his attorney at
18 any time.
19

20 The defense and State have already agreed to stipulate to foundation for the Hartford
21 Insurance documents. The State did not plan on calling any witnesses related to the Hartford
22 Insurance documents other than foundation witnesses, which the State had previously flown
23 to Arizona from Minnesota.

24 The defense now seeks to obtain the irrelevant statement of attorney Kottke and
25 simultaneously back out of this stipulation as a sanction. The defense has failed to
26 demonstrate that they could not get a statement from Kottke by simply asking him for it.

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

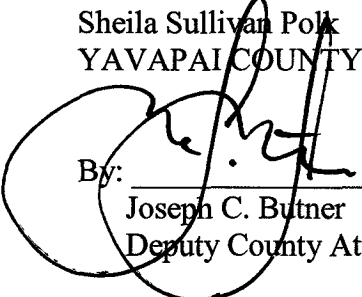
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1 There has been no violation of any disclosure rules. The defense motion should be
2 denied.

3 RESPECTFULLY SUBMITTED this 14th day of October, 2010.

4 Sheila Sullivan Polk
5 YAVAPAI COUNTY ATTORNEY

6
7 By: 
8 Joseph C. Butner
Deputy County Attorney

9 COPIES of the foregoing delivered this
10 14th day of October, 2010, to:


11 Honorable Warren Darrow
12 Division 6
13 Yavapai County Superior Court
14 (via email)

15 John Sears
16 511 E. Gurley St.
17 Prescott, AZ 86301
18 Attorney for Defendant
19 (via email)

20 Larry Hammond
21 Anne Chapman
22 Osborn Maledon, P.A.
23 2929 North Central Ave, 21st Floor
24 Phoenix, AZ
25 Attorney for Defendant
26 (via email)

Chris DuPont
Attorney for Katie and Charlotte DeMocker
(via email)

John Napper
Attorney for Renee Girard
(via email)

By: 

THOMAS K. KELLY, P.C.

Attorney at Law

Thomas K. Kelly

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AZ Board of Legal Specialization

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August 13, 2010

Joseph C. Butner, III
Deputy County Attorney
255 E. Gurley
Prescott, Arizona
Hand-delivered

Re: Chris Kottke

Dear Joe:

This office represents Chris Kottke. I read with interest your petition filed under seal in PB 2008-0202. With all due respect, you are flat wrong in believing that Mr. Kottke did anything in the probate of Carole Kennedy's estate which may be considered improper and/or in violation of Arizona probate laws. Moreover, Chris has never communicated with Mr. Democker and has no interest or opinion regarding the outcome of his criminal case. He is not engaged in some grand conspiracy to assist in his defense. His work in the probate case was simply motivated by a desire to perform his duties in a professional manner and to the best of his abilities.

It is our understanding there may be a similar pleading filed in the criminal case which may reference the work performed by Chris Kottke. Mr. Kottke is anxious to lay this issue regarding his professionalism at rest. Understanding you are in the middle of the Democker jury trial, we would make ourselves available at your convenience to discuss the legal basis supporting his work in the probate case. I believe such a meeting will assist you in understanding the factual and legal basis regarding the administration of Ms. Kennedy's estate. Whatever impact it may or may not have on participants in the criminal case would then be left to your analysis. However, such an opinion will then be based on a correct interpretation of the facts and law applicable to the probate matter.

I look forward to your response.

Yours Truly,


Thomas K. Kelly

Cc: client
File

Exhibit A